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No. 97-42

(19)

In The
Supreme Court of the United States
October Term, 1997

Eastern Enterprises,
Petitioner,
v.

Kenneth S. Apfel,
COMMISSIONER OF SOCIAL SECURITY, *et al.*,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the First Circuit

BRIEF OF *AMICUS CURIAE* THE UNITED MINE WORKERS OF AMERICA IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST

The United Mine Workers of America (the "UMWA"), a national labor organization of over one hundred and thirty thousand members, is dedicated to representing the interests of the nation's coal miners and their families.[1] Since its creation in 1890, the UMWA has sought to provide the nation's miners fair wages, safe working conditions and health and retirement benefits. In particular, for over fifty years, the UMWA has worked to ensure that its working and retired members and their families would be provided with comprehensive health care coverage. It was the UMWA's insistence on such benefits that caused a national labor dispute in 1946 and led to the seizure of the nation's coal mines by the United States. During the period of government control, the first welfare and retirement program was created.

For the next forty years, the UMWA endeavored to maintain these benefits through collective bargaining with coal operators. By the end of the 1980s, however, it became apparent that collective bargaining could not resolve the complex problems confronting the health and retirement program. Congress first recognized the severity of this problem in 1989. The issue of continued benefits for over one hundred thousand beneficiaries was one of the primary causes of the bitter labor dispute between the UMWA and the Pittston Coal Co. As part of the settlement of that dispute, a special commission was created to investigate the growing financial crisis confronting the UMWA Benefit Trusts. After receiving the Commission's report, Congress conducted its

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[1]Counsel for all parties have consented to the filing of this *amicus* brief, and the UMWA has filed those consents with the Clerk of the Court. Sup.Ct.R. 37.3 The UMWA's submission was prepared in part from materials developed by the firm of Mooney, Green, Baker, Gibson and Saindon, P.C. Members of this firm have continuously represented the UMWA in employee benefit matters since approximately ten years prior to the passage of the Coal Act. It has also served as counsel to the Respondent UMWA Combined Benefit Fund on particular matters. No entity other than the UMWA has contributed to the preparation or submission of this brief. Sup.Ct. R.37.6.

own exhaustive review and considered legislative solutions to the crisis. After trying several approaches, Congress eventually enacted the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), *codified in relevant part at*, 26 U.S.C.§ 9701 *et seq*. It is the application of the Coal Act to Eastern Enterprises ("Eastern") that is presented to the Court in this matter.

In view of its unique knowledge of the historical background of the Coal Act, the UMWA can provide the Court with valuable insight into the issues raised by this case. Accordingly, the UMWA's participation may be of assistance to the Court in understanding the factual underpinnings of the Coal Act. In addition, the matter before the Court involves directly the continued provision of health benefits to hundreds of retired coal miners and their spouses and dependents as well as indirectly the health benefits of thousands of other retired coal miners and their spouses and dependents. These retirees were, and many still are, members of the UMWA. Inasmuch as the constitutional questions raised by the Petition will be addressed at length by others, the UMWA's submission focuses primarily on an explication and amplification of the factual background of the Coal Act. The UMWA, as *amicus curiae*, submits its brief in support of the Respondents to support the holding of the First Circuit Court of Appeals, as well as every other federal court to consider the question, that the Coal Act is a constitutional exercise of Congressional power.

STATEMENT OF THE CASE

As recognized by the President's Commission on Coal, "[c]oal is unique among the major energy resources in its close identification with the people who produce it." *The President's Commission on Coal, The American Coal Miner: A Report on Community and Living Conditions in the Coalfields*, iv (1980) (the "*President's Commission*"). Unlike other industries "coal and the coal miner are intertwined in American legend and history." *Id.*

It is this unique industry with its unique history and

problems, as well as the solutions to the those problems, that lie at the heart of this case. In particular, the health care provided to coal miners and their families presents one of the most interesting segments of American industrial and labor history. Starting before the turn of the century, the prevalent system of health care for miners and their families was the "company doctor." These physicians were in the direct employ of mine operators. For many years, the company doctor was often the only health care professional, particularly in the rural communities where coal is often mined. Similar to the company-owned housing that miners and their families lived in, the cost of this care was borne by the miners by direct deductions from their wages. These costs, including deductions for purchases at the company stores, often consumed the bulk of the miners' compensation. *See generally United States Coal Commission: Report of the U.S. Coal Commission* (1925).

1. Krug-Lewis Agreement

In the late 1930s and early 1940s, the UMWA began to demand drastic changes in this system. The issue of the quality of health care for the nations's coal miners came to prominence during the contract negotiations between the UMWA and coal operators in 1946. In its contract proposals, the UMWA demanded the establishment of an independent system to provide for health and welfare benefits. The mine owners refused, and the UMWA commenced a nationwide strike.

As the strike progressed, it caused a severe crisis in the nation and President Truman intervened directly. Invoking the War Labor Disputes Act, he issued an Executive Order directing Secretary of the Interior Julius Krug to seize the mines and continue their operations in the national interest. In addition, the order also authorized Secretary Krug to negotiate with the UMWA. 11 Fed. Reg. 5593 (1946). Acting on behalf of the United States, Secretary Krug entered direct negotiations with the UMWA. Seven days later, Secretary Krug signed the National Bituminous Coal Wage Agreement with UMWA President John L. Lewis at the White House (the "Krug-Lewis Agreement").

The Krug-Lewis Agreement expressly created two new benefit plans: the United Mine Workers of America Welfare and Retirement Fund (the "1946 Fund"), and the United Mine Workers of America Medical and Hospital Fund (the "UMWA Medical and Hospital Fund"). J.A. 261a-263a. The 1946 Fund was intended to provide a wide range of medical and other benefits to working and retired miners and their dependents and survivors. The UMWA Medical and Hospital Fund was designed to make hospital services available to the same population. In the Krug-Lewis Agreement, the United States and the UMWA also agreed to "coordinate the development of policies and working agreements necessary for the effective operation of each fund" so that "each fund [would], to the maximum degree practicable, operate to complement the other." *See United States Department of Interior, A Medical Survey of the Bituminous - Coal Industry: Report of the Coal Mines Administration* (1947), Appendix, 233 (the "*Boone Report*").

The Krug-Lewis Agreement provided miners with two victories regarding health care issues. The first was the creation of the health and retirement fund. The second was the commitment by the United States to undertake directly a review and analysis of the health care in the nation's coal fields. The medical survey provided for in the Krug-Lewis Agreement was conducted by a senior United States Navy medical officer, Rear Admiral Joel T. Boone, under the auspices of the Department of the Interior. J.A. 261a-263a. The *Boone Report* chronicled the deficiencies in a health care delivery system that had not changed appreciably since the time of the 1922 U.S. Coal Commission. Most miners were still treated by company doctors and the miners financed this system by direct deductions from their paychecks. The *Boone Report* also found that fewer than 20% of the mine locations were served by hospitals providing basic medical care. *President's Commission*, at 79.

After reviewing the shocking state of medical care in the coal camps, the *Boone Report* stated, "[i]f it is custom and tradition that miner families shall exist in squalor, it is time for custom and

tradition to be abolished." *Boone Report*, at 59. With the beginning of the new health care system, the UMWA sought to bring an end to that custom and tradition.

2. The 1947 NBCWA

Shortly after the 1946 Fund commenced operations, the UMWA and coal operators entered into a new collective bargaining agreement, effective May 1, 1947 (the "1947 NBCWA"). The 1947 NBCWA provided that the 1947 UMWA Welfare and Retirement Fund (the "1947 Fund"), would succeed the two original funds. Like its predecessors, the 1947 Fund was established to make payments to UMWA miners and their dependents for a broad range of benefits. By the end of December 1948, the 1947 Fund had provided medical benefits and pensions to more than 250,000 coal miners and their families in 26 states. R.A. 1910-11. All in all, the Fund spent more than $100 million to provide for such benefits.

The 1947 Fund expanded the scope of its medical program in 1949. By August 31, 1949, the Fund provided hospitalization and medical care coverage for working, retired, disabled and unemployed miners and their wives, widows and children under age 18. R.A. 1903.

3. The 1950 NBCWA

The 1950 NBCWA created a new multiemployer fund called the United Mine Workers of America Welfare and Retirement Fund of 1950 (the "1950 Fund"). The 1950 NBCWA reflected the parties' understanding that in return for increased mechanization of the nation's coal mines that would substantially reduce mine employment, the coal operators would improve the health benefits and wages of the coal miners. [2] *See Coal Commission Report: A*

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[2]Consistent with the move towards mechanization, unemployment rose quickly in the coal fields. In 1950, there were 415,000 working miners. By 1952, the number dropped to 335,000. The decline continued throughout the 1950s with only 197,000 miners on the job in 1958. *Bituminous Coal Facts, 1960* (National Coal Association 1960) p.116. Employment continued to

Report to the Secretary of Labor and the American People (November 1990) ("*Coal Commission*") J.A.265a. The 1950 Fund succeeded the 1947 Fund.

On July 1, 1950, building upon the program that had been administered by the 1947 Fund, the 1950 Fund introduced a comprehensive hospital and medical care program. The program provided for the payment of unlimited hospitalization and medical care in the hospital for working and unemployed miners; their spouses and children; as well as retired miners and their wives and widows. The program's hospital and medical care coverage for miners' widows terminated only upon their remarriage. R.A. 1900-1967.

By September 1951, the 1950 Fund's medical and hospital care program was in full operation. As explained by Charles A. Owen, the 1950 Fund's management-appointed trustee, in a November 1951 report to the 1950 NBCWA signatory coal operators, the Fund provided a comprehensive scheme of health benefits. Trustee Owen also informed the coal operators that the Fund's medical and hospital benefits covered "Hospitalization, Surgical and Medical Care for mine worker [sic], *including pensioners and dependents during his life, without limit as to duration* ...." R.A. 1971-72; J.A. 132a - 133a[3] (emphasis

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decline in the 1960s and by 1969 there were only 124,500 working miners. J.A. 268a.

[3]Joseph E. Moody, then president of the Southern Coal Producer's Association, discussed the 1950 Fund in an October, 1953 speech containing the following passages:

> I hesitate to speculate on what might happen if the Coal Welfare Fund again goes broke... But depriving some 400,000 persons of benefits they have been promised grown accustomed to, could be political as well as social dynamite. It is entirely conceivable that Congress, with an eye to the danger of complete disruption of the domestic coal industry -- and to the votes involved -- might decide it was necessary to step in and take over the mines... [p]erhaps legislation by Congress is necessary to proscribe [sic] sound restrictions under which such

supplied).

4. The Establishment of the UMWA 1950 and 1974 Benefit Trusts

The 1950 Fund continued to provide health benefits until the 1974 NBCWA. At that time, partly in response to the enactment of the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, the coal operators and the UMWA agreed to divide the 1950 Fund into four separate multiemployer plans. Two of the new plans provided pension benefits to retired miners. The other two plans – the United Mine Workers of America 1950 Benefit Trust (the "1950 Benefit Trust") and the United Mine Workers of America 1974 Benefit Trust (the "1974 Benefit Trust") (collectively the "UMWA Benefit Trusts") - provided health benefits to retired miners. J.A. 269a. The agreement also continued the program of lifetime healthcare.[4]

> benefit plans can operate; but if it is, we as businessmen and Americans must see that such legislation is passed. R.A. 1899, 2000-01.

[4]Contrary to the suggestions made by petitioner and several *amicus curiae*, the promise of lifetime benefits did not originate in the 1974 NBCWA. Although the '74 agreement contained a negotiated plan of benefits that replaced Trustee-established benefit levels, there was no question that the retirees had previously been promised lifetime benefits. J.A. 132a-134a. Federal courts consistently have held that the UMWA retirees are entitled to lifetime health benefits. *See, e.g., United Mine Workers of America v. Nobel*, 720 F.Supp. 1169 (W.D. Pa. 1989), *aff'd without opinion*, 902 F.2d 1558 (3d Cir. 1990), *cert. denied*, 499 U.S. 904 (1991), where the court held that:

> [P]ension benefits for retired miners were provided beginning in 1947, under the previous trust, and health benefits were provided to retired miners beginning no later than 1950. The pension and health benefits for retired miners were provided throughout the life of the miner. *Id.* at 1178.

The court also stated that:

> The language of the plan benefits contained in the past five collective bargaining agreements between the UMWA and the BCOA, providing that a pensioner will be entitled to a health services card for life,

The UMWA and the coal operators restructured the 1974 Benefit Trust in the 1978 NBCWA. In that contract, signatory employers agreed to establish individual employer health plans to provide benefits to their active employees and retirees. Thus, the UMWA and the coal operators shifted primary responsibility for providing health benefits for post-1975 retirees and the active work force from the 1974 Benefit Trust to the coal operators that were signatory to the 1978 NBCWA and successor agreements. The 1950 Benefit Trust continued to provide health benefits to pre-1976 retirees, and the 1974 Benefit Trust was retained as an "orphan" plan to provide retiree health benefits to post-1975 UMWA retirees whose last employer had gone out of business. J.A. 271a-272a.

5. The Crisis in the UMWA Benefit Trusts

During the last decade, the UMWA Benefit Trusts experienced a financial crisis that threatened their continued existence. Although there were various reasons for this crisis, the principal reason was the steadily declining base of contributing employers combined with the drastically increasing cost of health benefits for the aged population of the Trusts.

By the late 1980s, these factors seriously jeopardized the Trusts' ability to continue providing benefits, thereby causing substantial disruption in the nation's coal fields. The resulting uncertainty and instability gave rise to significant labor disputes. The most notorious of these labor disputes was the 1989 strike against the Pittston Coal Co. *See generally UMWA v. Bagwell*, 512 U.S. 821 (1994). The history of that strike is particularly relevant to the passage of the Coal Act and illustrates the need for legislative action.

The UMWA and Pittston had maintained a collective

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together with the 25-year history of lifetime benefits prior to 1974, and the testimony of the parties of record establish that the parties intended to provide health benefits to the individual plaintiffs for life. *Id.* at 1173. (emphasis supplied).

bargaining relationship for many years. Prior to 1987, however, Pittston had not bargained directly with the UMWA but had authorized the BCOA to bargain on its behalf. In 1987, Pittston, then a signatory to the 1984 NBCWA and a member of BCOA, decided to withdraw from the BCOA and negotiate independently with the UMWA.

When the 1984 contract expired in February 1988, the miners at Pittston continued to work while negotiations for a successor agreement ensued. Negotiations between Pittston and the UMWA revealed major areas of disagreement, primarily in the area of medical and pension benefits. Indeed, during the course of the negotiations, although Pittston repeatedly stated that it was willing to "pay for its own" retirees' health care, it took the position that it would no longer participate in the multiemployer benefit plans.

The negotiations between the parties continued without reaching agreement and in April of 1989 the miners at Pittston commenced an unfair labor practice strike. The unrest caused by this dispute permeated not only the nation's coal fields but the entire country. Primarily as a result of the retiree health care issue, national and international attention became focused on the Pittston strike. Thousands of UMWA supporters, including labor, religious and civil rights leaders, were arrested during the strike. "It was to be one of the most bitter strikes in recent labor history." *Coal Commission Report on Health Benefits of Retired Miners: Hearing Before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance*, 102d Cong., 1st Sess. 319 (1991) ("*1991 Subcommittee Hearings*").

The escalation of strike activity led Secretary of Labor Elizabeth Dole to become involved in the Pittston strike. After meeting with striking miners and retirees, as well as both Pittston and the UMWA, she announced that she would appoint a "super mediator" to attempt to resolve the strike. Secretary Dole directed William J. Usery, Secretary of Labor during the Ford Administration, to mediate this serious dispute. *1991*

Subcommittee Hearings, at 303.[5] Throughout the subsequent negotiations monitored and supervised by Secretary Usery, it became apparent that the problem of retiree health care was incapable of resolution through the collective bargaining process. After the tireless efforts of Secretary Usery, the parties were able to reach a new agreement, although that agreement was subsequently rejected by the UMWA Trusts. *Id.* at 304.

In announcing the agreement, Secretary Dole recognized that, during the strike and settlement negotiations, it had become clear that the overriding issue of concern was the longstanding security of the health care benefits of the miners, retirees and their families. As she stated, "[t]his is an issue larger than the Pittston dispute." Consequently, when the settlement was announced at the Department of Labor, she also announced that she would be appointing a blue ribbon commission to review the health care issues and to make recommendations to resolve them. Secretary Dole subsequently appointed former Secretary Usery as the Chair of the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission").

6. The Coal Commission

The Coal Act traces its origins to the November 5, 1990 report of the Coal Commission. J.A. 231a-344a. In carrying out its responsibilities, the Coal Commission conducted an exhaustive study of the issues that confronted the UMWA retiree health care delivery system.

After completing its review, the Coal Commission determined that:

> the combination of skyrocketing health care costs, an increasing number of retirees who have been abandoned by their employers, and a smaller percentage of coal producers making contributions to the UMWA Funds have put the health care program for retirees in a financial crisis. J.A. 236a.

Having identified the causes of the funding crisis that jeopardized the UMWA retiree health care delivery program, the Coal Commission next considered possible solutions. In so doing, the Coal Commission recognized that the collective bargaining process was inadequate to provide a long-term solution:

> [t]he escalating cost of providing adequate health care to coal miners and their families, particularly the increasing population of orphan retirees, cannot properly or fairly be solved by the parties through collective bargaining alone. J.A. 321a, *see also* J.A. 247a, 366a.

The Coal Commission therefore concluded that the continued delivery and financing of health care in the coal industry would require:

> the imposition of a statutory obligation to contribute on current and past signatories, mechanisms to prevent future dumping of retiree health care obligation, authority to utilize excess pension assets and the implementation of state-of-the-art managed care and cost containment techniques. J.A. 306a.

The Commission recommended two alternative statutory approaches. The first approach called for the creation of two new funds: (1) a quasi-governmental corporation financed by an industry-wide tax on all coal operators to provide health care for

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[5]During the course of the strike, Senators Byrd, Heinz and Rockefeller introduced a bill that for the first time sought to impose a legislative solution to the crisis in the retiree health care system, S.1708, the Coal Industry Health Benefits Stabilization Act of 1989. *See* 135 Cong. Rec. S12313, S12340 (daily ed. October 2, 1989). A companion bill was introduced by Representative Boucher on October 5, 1989. *See* 135 Cong. Rec. H6987 (daily ed. October 12, 1989). The proposed legislation was Congress' first effort to resolve the financial crisis jeopardizing the health care of over one hundred thousand retired miners and their families. Although the bill contained 8 sections, it had two critical components. The first provided a mechanism for the transfer of "surplus assets" from the UMWA 1950 Pension Plan to the UMWA Benefit Trusts, and the second imposed a statutory obligation upon certain NBCWA signatory employers to continue financing the UMWA Benefit Trusts.

UMWA orphan retirees; and (2) a private multi-employer fund financed by current and former NBCWA signatories to provide health care to UMWA retirees. J.A. 306a-311a. Under the second approach, the Coal Commission recommended the creation of a single, private multi-employer plan to provide health benefits to orphan retirees. The approach contained a financing scheme that imposed liability upon all employers and their related business entities that were, at one time, signatory to one or more NBCWAs:

> Instead of imposing a new tax on all coal operators and establishing an agency of the federal government, this plan seeks additional revenues from a broadened base of current and past signatories to the contracts. J.A. 312(a).

7. Congressional Response to Coal Commission Report

After the completion of the Coal Commission's charge, Congress began its own exhaustive examination of the retiree health care crisis. On September 25, 1991, the Subcommittee on Medicare and Long-Term Care of the Senate Finance Committee held a hearing to consider the report and recommendations of the Coal Commission. In his opening remarks, Subcommittee Chairman Rockefeller reiterated that the UMWA Benefit Trusts were in grave financial condition. Senator Rockefeller also expressed his unequivocal intention to ensure that the crisis would be remedied:

> I simply suggest to you that this problem affects the entire industry and in fact the entire country. There is an industry interest, there is a national interest in resolving this problem, and I hope all concerned will be involved constructively.... We are talking about tens of thousands of elderly and often infirm people who long ago earned these benefits by firing the furnaces of American industry in war and in peace. *The industry and national commitments to health care for these miners and their families must and will be kept. 1991 Subcommittee Hearings*, pp. 2-3. (emphasis supplied).

Several individuals testified at the Subcommittee hearing,

including retired miners and their wives. Dixie Woolum, the widow of a miner who had mined coal for Massey Coal Company for 45 years, testified that:

> My husband, Jimmy, worked in the mines for the same coal company for 45 years. He died when he was sixty years old, three months after his last working day. ... He gave his life in the mines. I packed his dinner bucket and got him off to work every day for 45 years. Then to show how much they cared Massey Coal Company took my insurance card away in 1984. Finally after years without health benefits, the funds picked up my coverage. ... I was born in a coal-company house. We raised our family in a company house and I remember when we got the UMWA funds. ... After we got the funds Jimmy always said to me, "Dixie, if anything should happen to me, you and the kids will be taken care of." This is what they promised him and that is what we planned on and what we believed. *1991 Subcommittee Hearings*, at 4.[6]

In addition to retired miners and dependents, a number of others testified at the Subcommittee hearing including Professor Henry H. Perrit, Jr., a noted labor law expert from Villanova University and the Vice Chair of the Coal Commission. Professor Perrit explained that the Coal Commission reached a consensus on

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[6]UMWA retiree Homer Eckley provided similar testimony at the hearing:

> I grew up in a coal mining family, four generations of them. That was back when there was no benefits, nothing. I went into the Service and my dad went on strike, and when he came back they had benefits -- pension and hospitalization. *I went into the mine with the idea that when my time came, I could retire and have benefits, plus a pension.* ... Now they tell me that my mine was sold to another company and they are complaining about paying these benefits. I disagree. The entire coal industry is part of the problem and the entire coal industry should be part of the solution. *1991 Subcommittee Hearings*, at 5. (emphasis supplied).

several important issues. He stated that:

> The bottom line is that appropriate Government action to stabilize the financing of the retiree health care system in this industry, if it is to be done right, encourages private solutions to health care problems, honors commitments to retirees who worked hard to create economic prosperity for others, and encourages private sector innovation to ensure equitable access to high quality and cost effective health care at reasonable cost. ... Government action is necessary -- and every member of the Committee recognized this -- because collective bargaining cannot solve this problem. *1991 Subcommittee Hearings*, at 10.[7]

Secretary Usery also provided a written statement to the Subcommittee. Like Professor Perrit, Secretary Usery concluded that the collective bargaining process was inadequate to resolve the issue of retiree health care in the coal industry:

> In other circumstances, I would probably feel confident in saying that free collective bargaining alone can lead us out of the health care mess the coal industry faces today. ... The Federal Government, which was one of the parties to the creation of the existing health care apparatus in the coal industry, must take action -- through legislation and executive action, if necessary -- to prevent widespread dislocation and misery. *Id.* at 304.

8. Senate Bill No. 1989 -- Original Version

On November 19, 1991, approximately one month after the Subcommittee hearings concerning the Coal Commission report, Senator Rockefeller introduced S.1989, legislation incorporating many of the provisions set forth in the Coal Commission's first recommendation, The Coal Industry Retiree Health Benefit Act

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[7]Several other individuals and coal industry representatives testified in support of the Coal Commission's recommendations, including BCOA Chairman Michael Reilly. Mr. Reilly stated that NBCWA signatories "have a moral obligation to the funds." *1991 Subcommittee Hearings*, at 48.

of 1991, 137 Cong. Rec. S17061 (daily ed. Nov. 19, 1991). Senator Rockefeller stressed that:

> . . . the principle at stake here is actually quite simple: keeping commitments. We are talking about thousands of elderly, retired miners who spent their lives laboring to carve coal out of the Earth to create energy and comfort for the rest of the Nation. We are talking about widows. We are talking about their dependents. As the Secretary of Labor's Coal Commission said, we have thousands of people, entitled to health benefits, and the commitment to those beneficiaries must be honored. The rest is drafting details. 137 Cong. Rec. S17061 (daily ed. Nov. 19, 1991).

Under S.1989, as recommended by the Coal Commission, the UMWA Benefit Trusts were to be replaced by two entirely new entities, a government corporation called the Coal Industry Health Benefit Corporation (the "Corporation"), and a private welfare benefit plan called the 1991 Benefit Fund (the "1991 Fund"). S.1989 also provided for the transfer of "excess assets" from the UMWA 1950 Pension Plan to eliminate the deficits in the UMWA Benefit Trusts and to provide start-up costs for the new entities.

The provisions concerning eligibility for benefits from the Corporation are notable both for their complexity and their scope. Under S.1989, the Corporation's beneficiary population consisted of "orphaned" retired miners (and their dependents) who had been engaged in the production of coal, regardless of whether they were represented by the UMWA and regardless of whether they worked for an NBCWA or former NBCWA signatory employer. S.1989 § 9711.

S.1989 contained a complex, two-part funding mechanism that had an industry-wide scope. Specifically, the first part consisted of an industry-wide fee or "premium" obligation, including an equivalent fee on imported coal, that was imposed on all coal industry employers; the second part consisted of a "per beneficiary" premium that was imposed only upon "Last Signatory Operators" (as defined in § 9723(b)) to whom

Corporation beneficiaries could be attributed. S.1989 § 9704(g), 137 Cong. Rec. S17065 (daily ed. Nov. 19, 1991). The introduction of this dual financing mechanism heralded the "pay for your own" concept that runs throughout the legislative history of the Coal Act.

The second major component of S.1989 imposed obligations upon Last Signatory Operators that were required to maintain individual employer plans pursuant to the 1978 or later NBCWAs. S.1989 § 9714(a), (b). The last major piece of the legislation was the creation of the 1991 Benefit Fund. S.1989 § 9713. The 1991 Benefit Fund was to be created by the merger of the UMWA Benefit Trusts and was to be an employee welfare benefit plan and a multi-employer plan, as defined in ERISA. S.1989 § 9713(a)(1). The settlors of the Fund, *i.e.*, the UMWA and the BCOA, were authorized to design the structure and administration of the 1991 Benefit Fund. S.1989 § 9713(a)(2). The 1991 Benefit Fund would have been required to maintain the same level of benefits as was provided under the UMWA Benefit Trusts. S.1989 § 9713(c)(1).

S.1989 would have authorized the 1991 Benefit Fund's trustees to set a fixed monthly assessment each year. S.1989 § 9713(d). Each Last Signatory Operator required to contribute to the 1991 Benefit Fund had to pay these monthly assessments. S.1989 § 9713(d)(2). Finally, S.1989 also provided for the transfers of "excess pension assets" from the UMWA 1950 Pension Plan.

9. Senate Bill 1989 -- March 1992 Version

S.1989 was revised in March, 1992 in order to accommodate objections from other Senators, particularly those from western states. *See* 138 Cong. Rec. S5081 (statement of Senator Boren) (daily ed. April 8, 1992). The tax provisions set forth in Senator Rockefeller's revised legislation were included in Title VI of the Tax Fairness and Economic Growth Act of 1992, H.R. 4210. Although the substantive provisions creating a new tri-partite retiree health care system remained intact, the Corporation's

financing provisions were changed in three significant ways.

First, the revised version of S.1989 ("Revised S.1989") imposed an industry-wide premium and an import fee only upon domestic and foreign bituminous coal, excluding subbituminous and lignite coal.[8] *See* Revised S.1989, § 9704(g)(1)(A), 138 Cong. Rec. S3022 (daily ed. March 10, 1992).

Second, the revised version of S.1989 created a two-tiered industry-wide premium. In the new proposal, the premium for bituminous coal produced in "eastern" states, generally states east of the Mississippi River, would have been $0.99 per hour. The premium for bituminous coal produced in "western" states, *i.e.*, all states west of the Mississippi River except for Montana and Texas, however, would have been $0.15 per hour. *See* Revised S.1989 § 9704(g)(1)(A)(i), (ii).[9]

Third, the revised version of S.1989 exempted lignite coal operators that had ceased to mine bituminous and sub-bituminous coal prior to January 1, 1992. Revised S.1989 § 9704(g)(1)(C)(vi).

During debate on S.1989, Senator Wallop, the Bush Administration's leading Congressional spokesman on the proposed legislation, expressed his strong opposition to the use of industry-wide premiums to finance the statute. *See* 138 Cong. Rec. S3433 (daily ed. Mar. 12, 1992). Specifically, Senator Wallop took issue with the imposition of such a tax on the grounds it would have required the entire coal industry to pay for the health care of the UMWA retirees, regardless of whether the

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[8]Although the revised legislation imposed premium liability only upon domestic and imported bituminous coal, the Corporation was still required to provide coverage to "orphan" miners who performed work in the subbituminous and lignite coal sectors. *See* Revised S.1989 § 9711(b)(1)(E)(i).

[9]Under the revised version of the bill, the fee on imported coal was also raised from $0.15 per ton to $0.25 per ton. Revised S.1989 § 9704(g)(1)(B)(ii), 138 Cong. Rec. S3022 (daily ed. March 10, 1992).

affected coal operators ever had any relationship with the UMWA and UMWA retirees, and regardless of whether they were ever signatory to an NBCWA. *Id.*[10]

Senator Wallop was particularly troubled by the use of such an industry-wide premium in light of the bill's funding exemption for lignite and subbituminous coal operators, and its exclusion of Texas and Montana. 138 Cong. Rec S3433 (daily ed. March 12, 1992); *see* Revised S.1989 § 9704(g)(1)(C)(vi). Senator Wallop was concerned that the remaining coal operators would have to shoulder the burden of providing health benefits for the orphan retirees of the exempted operators. 138 Cong. Rec. S3433 (daily ed. March 17, 1992).

Senators Boren, Dole and Simpson also opposed Senator Rockefeller's proposed legislation. Senator Boren stated that the proposed legislation would set "a precedent that companies that were not parties to a particular collective bargaining agreement shall now have liabilities as a result of agreements that other parties entered into." 138 Cong. Rec. S3434 (daily ed. March 12, 1992). Senator Dole likewise commented that the proposed legislation set "a new standard in bad public policy." 138 Cong. Rec. S3435 (daily ed. March 12, 1992).

Senator Simpson was also highly critical of the industry-wide fee provisions set forth in the proposed legislation. He stated that:[11]

> The coal tax provision in this bill is a singular attempt to bail out a privately negotiated union health plan in a fashion that

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[10]Senator Wallop's opposition to the use of an industry-wide premium evidenced his more fundamental opposition to the legislation's goal of providing retiree health care benefits for all retired miners, not just retired UMWA miners. 138 Cong. Rec. S3433 (daily ed. March 17, 1992).

[11]Although he opposed Senator Rockefeller's proposed legislation, Senator Simpson stated that UMWA miners "are in every sense entitled to the health benefits that were promised them in collective bargaining by their employers. None of us here disputes that." *Id.*

> would violate the most fundamental principles of collective bargaining and simultaneously turn inside out the economic dynamics of a highly competitive industry. 138 Cong. Rec. S3439 (daily ed. March 12, 1992).

Senators Rockefeller and Byrd raised a vigorous defense of the proposed bill. Senator Rockefeller stated that:

> All we attempt to do in this amendment is what ought to be done, is to put no burden on the U.S. Government, on the U.S. taxpayer, but to say that the coal industry, as has always been the case, should take care of its own. This has always been the case with the coal industry, and this should continue to be the case. 138 Cong. Rec. S3436 (daily ed. March 12, 1992).

Expressing his "regret that certain compromises had to be made to secure approval of the heart of S.1989 by the Finance Committee," Senator Byrd similarly stated that Congress' failure to enact the proposed legislation to ensure the continued provision of health care benefits to retired miners and their dependents "would be unconscionable." 138 Cong. Rec. S3436 (daily ed. March 12, 1992). Senator Byrd further stated that:

> What this effort is all about . . . is to ensure that those who are responsible assume their responsibility. Any company that is currently in business would be made to assume responsibility for the health care costs of its retirees, irrespective of whether it had previously succeeded in dumping liability for its retirees on others.

138 Cong. Rec. S3438 (daily ed. March 12, 1992).

Finally, Senator Wofford stated that:

> The health benefits provided to coal miners under this bill are nothing more than what they are due. They worked hard for their retirement years. They have earned some peace of mind and a decent, healthy quality of life. This is not a handout. This is not a giveaway. This legislation represents nothing more than a promise kept, a commitment honored." 137

Cong. Rec. S3438 (daily ed. March 12, 1992).[12]

H.R. 4210 (including Revised S.1989) was passed by both houses of Congress on March 20, 1992. President Bush vetoed the legislation the same day.

10. The Boren Amendment: S.2550

Legislative efforts to solve the crisis confronting the beneficiaries did not stop with President Bush's veto. On April 8, 1992, Senators Boren, Dole and Wallop introduced S.2550, substitute legislation that was markedly different from Senator Rockefeller's proposal. *See* 138 Cong. Rec. S5081 (daily ed. April 8, 1992). Unlike Senator Rockefeller, Senator Boren identified the problem requiring Congressional attention as one that affected only the UMWA Benefit Trusts and that involved only the unionized sector of the coal industry. Senator Boren expressed particular concern over the concept that "companies that were not parties to a particular collective bargaining agreement would be legally required to meet certain contractual obligations...." *Id.* He was further troubled by the "provisions establishing various exemptions and tax rates that differed according to geographic region." *Id.*

Senator Dole similarly criticized Senator Rockefeller's proposed legislation. In this regard, Senator Dole stated that it was "unprecedented and unacceptable" legislation because it imposed:

> A penalty on innocent bystanders -- non-BCOA companies and non-UMW employees -- whose only connection to this dispute is that they coincidentally mine coal." 138 Cong. Rec. S5082 (daily ed. April 8, 1992).

S.2550, entitled the "United Mine Workers of America Retiree Health Benefit Act of 1992," was designed solely to address the funding crisis within the UMWA 1950 and 1974 Benefit Trusts without changing the then current structure. *See* S.2550 § 2. S.2550 consisted of four components, some of which were similar to the provisions set forth in the Coal Industry Retiree Health Benefit Act of 1991 (S.1989), and others of which bore a resemblance to the provisions set forth in the Health Benefit Stabilization Act of 1989 (S.1708).

Initially, the bill required the transfer of excess assets of the UMWA 1950 Pension Plan to the Benefit Trusts. In addition, the bill would have required the imposition of withdrawal liability upon all employers that were signatory to the 1988 or later NBCWAs who withdraw from the UMWA 1950 and 1974 Benefit Trusts. S.2550 § 4501(a).

The third component required employers to continue contributing to the Benefit Trusts at rates established by the UMWA and BCOA. S.2550 § 4512(a). The final component of Senator Boren's proposed legislation would have required the trustees of the UMWA Benefit Trusts to adopt mandatory cost containment measures under the guidance of the Secretary of Health and Human Services. S.2550 § 5.

Senator Boren's proposed legislation did not gain widespread support. Its fundamental flaw was that it continued to place exclusive funding responsibility on the 1988 NBCWA signatories and failed to broaden the contribution base. Thus, it did not address the critical problems identified by the Coal Commission.

11. The Energy Bill -- H.R. 776

On February 4, 1991, the "Comprehensive National Energy Act" H.R. 776, (the "Energy Bill") was introduced in the House of Representatives. *See* 137 Cong. Rec. E381 (Feb. 4, 1991). After it was passed in the House, the bill was directed to the Senate, where, on June 4, 1992, its revenue provisions were

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[12]Responding to criticism of the proposed legislation, Senator Specter, another strong supporter of the proposed legislation, noted that:

> on many occasions in our society we structure our laws which help those who are in special need even though those who are making the payments do not have any direct responsibility. In our society, the laws do impose obligations on people to take care of those who are in great or are in extreme need. 137 Cong. Rec. S3439 (daily ed. March 12, 1992).

assigned to the Senate Finance Committee. At that time, the bill did not contain any coal industry retiree health care provisions. The Senate Finance Committee, however, added the provisions contained in the March, 1992 version of S.1989 to the bill.

a. Incorporation of AMR Fees Proposal

Prior to the veto of H.R. 4210, Representative Rahall had introduced legislation extending the duration of the Abandoned Mine Reclamation Fund ("AMR Fund") from 1995 to 2007. H.R. 4344. In addition, it required the transfer of $50 million from the AMR Fund each fiscal year to the "Coal Industry Retiree Benefit Fund," *i.e.*, the Corporation proposed in S.1989. Representative Rahall's AMR proposal found its way into the Energy Bill. As modified in the version of the Energy Bill reported out of the committee, Rahall's proposal required that the duration of contributions to the AMR Fund be extended to 2001. It continued to require that the AMR Fund transfer $50 million to the Corporation each fiscal year. *See* 138 Cong. Rec. D427.

b. The Senate Finance Committee Version

On June 16, 1992, substitute revenue provisions of the Energy Bill were reported favorably out of the Senate Finance Committee. The substitute provisions included a slightly modified version of Senator Rockefeller's S.1989 as it existed on March 20, 1992. These modifications involved the amount of premiums that would be payable to the Corporation.

Specifically, this version required the payment of higher industry-wide premiums for both domestic and imported bituminous coal, and eliminated the exclusion of Texas and Montana. It also set the specific amount of the per beneficiary premiums payable by last signatory operators to the 1991 Benefit Fund. All of the other substantive terms contained in the March 20, 1992 version remained the same, including the lignite and subbituminous coal exception that had concerned Senator Wallop.

c. The Subsequent Floor Amendment Version-The Coal Act

On July 29, 1992, Senator Rockefeller introduced a floor

amendment to the revenue provisions of the Energy Act that had recently been reported out of the Senate Finance Committee. This floor amendment, which was passed by the Senate by voice vote, became the final version of the Coal Act. *See* 138 Cong. Rec. S10627 (daily ed. July 29,1992).

Like the prior versions of Senator Rockefeller's proposals, the final version of the Coal Act dismantled the private, multiemployer retiree health care structure that had existed for more than forty years. Unlike the prior versions, however, the final version contemplated retiree health coverage for only UMWA retirees and their dependents who had been receiving or would have been eligible to receive retiree health benefits in accordance with the contractual multiemployer health care system that had been established and maintained pursuant to the NBCWAs. Additionally, the government corporation that had been contemplated in the earlier version was replaced with entirely new private, multiemployer plans that provided benefits only to UMWA retirees and their dependents.

Under the final version of the Coal Act, the controversial industry-wide financing provisions were eliminated and replaced by "per beneficiary premiums" that were based on the number of plan beneficiaries attributable to each responsible employer. Thus, the "pay for your own" concept that had existed in every prior version become the overriding principle in the final version of the Coal Act. Accordingly, employers that had never been signatory to a UMWA agreement were relieved of all obligations under the final version.

Unlike the prior versions, the final version of the Coal Act contained provisions for the transfer of funds from the AMR Fund and the duration of the AMR Fund was extended to 2004. In addition, the amount of the transfers from the AMR Fund was increased, but the yearly transfers were postponed until October 1, 1995.

d. Debate and Passage

The Senate passed its version of the Energy Act on July 30,

1992. *See* 138 Cong. Rec. S10862 (daily ed. July 30, 1992). Because the Coal Act was not included in the House version of the Energy Bill, it was sent to a House-Senate Conference Committee.

The Conference Committee adopted the Senate's version of the Coal Act without any changes. The Conference Report was approved by the House on October 5, 1992, but not without strong opposition from certain members of the House. 138 Cong. Rec. H11408 (daily ed. Oct. 5, 1992).

The Senate adopted the Conference Report on October 8, 1992. Senator Rockefeller, stating that "the agreement is now honored," reviewed the arduous and often contentious history of the Coal Act. 138 Cong. Rec. S17632 (daily ed. Oct. 8, 1992). He explained that:

> The funding mechanism in [the final version of the Coal Act] is the one proposed by the [Bush] administration and on which the administration insisted. The accommodation was embodied in legislation that passed the Senate as part of the omnibus energy bill on July 29, 1992.
>
> While the approach taken by this measure is significantly different from [the original version of] S.1989, it is within the scope of the basic alternatives recommended by the [Coal] Commission. Instead of including a broad industry wide tax, the basic funding mechanism of this legislation generally requires premium payments from those for whom the retirees worked. These are the responsible companies. Some interests objected to the tax; others to the so-called reach-back approach of the present legislation. Both approaches are defensible and rational. The decision ultimately rested on the best basis for consensus in the legislative process.

138 Cong. Rec. S17633 (daily ed. Oct. 8, 1992).

President Bush signed the Energy Act on October 24, 1992 and the Coal Act became law.

SUMMARY OF THE ARGUMENT

The Coal Act does not violate the Due Process Clause of the Fifth Amendment. In reviewing economic legislation to determine whether it satisfies the requirements of due process, courts must accord Congress great deference. The choices made by Congress in enacting legislation are not subject to challenge unless they are irrational. In view of the fifty year history of the health care system first established by the historic Krug-Lewis Agreement, and the exhaustive examinations of the problems by both the bipartisan Coal Commission and Congress itself, the statutory scheme embodied in the Coal Act is a rational exercise of Congressional authority.

Similarly, a review of the three pronged test to be applied when reviewing economic legislation demonstrates that the Coal Act does not take Petitioner Eastern's property in violation of the Fifth Amendment. Because Eastern is only responsible for its own retirees, the impact of the statute on Eastern is consistent with its level of involvement with the Benefit Trusts. Moreover, given the degree of direct government involvement in the coal industry and the various Trusts, it would be unreasonable for Eastern to assume it could forever avoid responsibility for its own retirees.

ARGUMENT

I. The Coal Act is a Rational Exercise of Congressional Authority

In urging this Court to declare the Coal Act unconstitutional, petitioner and *amici* fail to acknowledge the "strong deference" courts must accord Congress with respect to its economic legislative determinations. *See Pension Benefit Guaranty Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). This judicial deference, reflecting an unwillingness to second-guess Congressional determinations, is premised on Congress' special role under the Constitution. *See* U.S. Const., Art. I, § 1. In light of this constitutional command, this Court has emphatically proscribed any "intrusion by the judiciary into the realm of

legislative value judgments." *Ferguson v. Skrupa*, 372 U.S. 726, 730 (1963). Indeed, as this Court cautioned in *Ferguson*, courts do not "sit as a superlegislature to weigh the wisdom of legislation." *Id.* at 731 (citation omitted). *See also Fullilove v. Klutznick*, 448 U.S. 448 (1980) (rejecting claim that Congress must, as a matter of constitutional law, determine whether proposed legislation is supported by a factual "record.").

These principles were reaffirmed in *FCC v. Beach Communications, Inc.*, 508 U.S. 307 (1993). That case held that economic legislative choices are "not subject to courtroom factfinding and may be based on rational speculation unsupported by evidence or empirical data." *Id.* at 315. The Court reasoned that "because we never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Id. See also Heller v. Doe*, 509 U.S. 312, 321 (1993) (noting that "courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends").

In the case of the Coal Act, after having had the benefit of the Coal Commission's Report, Congress conducted an exhaustive, two-year examination of the crisis in the UMWA Benefit Trusts. Inasmuch as the Coal Act reflects Congress' rational determination that all NBCWA signatory employers bear some degree of responsibility for the health care crisis facing the retirees and their families, it comports with the with Due Process Clause of the Fifth Amendment. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976) (rejecting constitutional challenge to the Black Lung Benefits Act of 1992, 30 U.S.C.§§ 901-945); *Concrete Pipe & Products v. Construction Laborers Pension Trust*, 508 U.S. 602 (1993) (rejecting attack on Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §§ 1381 *et seq.*).

II. The Coal Act Does Not Violate the Takings Clause

In discussing the appropriate standard to determine whether economic legislation violates the Takings Clause, this Court has stated that there is no set formula, and that it relies upon "*ad hoc*, factual inquiries into the circumstances of each particular case." *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224 (1986). Nevertheless, three factors have been identified as having particular significance,

> (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action. *Id.* at 225 (citations omitted).

Application of the principles set forth in *Connolly* leads to the inescapable conclusion that the Coal Act does not violate the Takings Clause. First, with respect to the nature of the governmental action involved -- requiring Eastern and other assigned operators to pay their fair share of the costs of providing health care benefits to their UMWA retirees -- Congress imposed on them an obligation that is proportional to their involvement with the UMWA Benefit Trusts. By requiring assigned operators to spend sums of money to finance health benefits for the Coal Act's beneficiaries, Congress has merely enacted legislation designed to ensure the continuation of a health benefits program that Eastern and other assigned operators voluntarily participated in. A program that caused "[r]etired coal miners to have legitimate expectations of health care benefits for life...." *Coal Commission*, J.A. 245a.

Second, with respect to the severity of the Act's impact, although it unquestionably "deprives an employer of whatever amount of money it is obligated to pay to fulfill its statutory liability," *Connolly*, 475 U.S. at 225, the Coal Act, to the maximum extent possible, imposes liability that is directly related to the employment relationship between Eastern and its former employees who are now Combined Fund beneficiaries.

Finally, the Coal Act cannot be said to so interfere with Eastern's reasonable investment-backed expectations that there is a violation of the Takings Clause. Just as the employer-appellant in *Connolly* voluntarily elected to participate in a multiemployer pension plan to reap the economic benefits of providing promised benefits through the use of pooled assets, Eastern voluntarily chose to finance benefits by pooling its assets in a multiemployer benefit plan. In light of the pervasive nature of the government's significant involvement and regulation of the coal industry, and the UMWA Trusts in particular, any expectation that Eastern may have had that it could forever shirk its responsibilities to its retirees, would have been unreasonable. *See also Concrete Pipe*, 508 U.S. at 641-47.

CONCLUSION

For the foregoing reasons, the Court should affirm the ruling below.

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